



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

### INSTRUCTIONAL BULLETIN NO. 39

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#### "SALE PRICE" UPON WHICH TAX IS BASED

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

Section 1811 of the Sales and Use Tax Law (Title 36, Part 3) levies a sales tax on sales of tangible personal property and taxable services "measured by the sale price". Section 1861 levies a similar use tax on purchases at retail sale where sales tax is not paid at the time of purchase. The tax is determined by applying the tax rate to the "sale price" of purchases for use or consumption in this State. Section 1752(14) defines the meaning of "sale price".

The purpose of this bulletin is to explain, on the basis of these statutory provisions, what is to be included in the sale price on which sales or use tax liability is based.

#### 1. IN GENERAL

##### a. The sale price on which sales tax is based includes:

- i. The full price, valued in money, whether paid in money or otherwise, including the value of traded in property. (See Section 2 of this bulletin).
- ii. The amount charged for any services that are a part of the sale, such as assembly, alteration or fabrication charges whether separately stated or not. (See Section 4 of this bulletin). Separately stated charges for installing or applying or repairing the property sold are not subject to tax.
- iii. Federal manufacturers' or importers' excise taxes with respect to automobiles, tires, firearms, tobacco, liquor, sporting goods, etc., even though this federal tax is separately stated.

##### b. The sale price on which sales tax is based does *not* include:

- i. Cash discounts allowed by the seller and taken by the purchaser. (See Section 3 of this bulletin).
- ii. Separately stated charges for installing, applying or repairing the property sold.
- iii. Separately stated charges for transportation of goods to the vendee by common or contract carrier or by mail. (See Section 5b of this bulletin).

- iv. Certain service charges in lieu of tips. (See Section 5c of this bulletin)
- v. Recycling Assistance Fee (See Instructional Bulletin 48).
- vi. Oil change premium (imposed by Maine law effective October 1, 2007)

**c. Partial or full credit may be taken by a retailer for transactions previously reported as taxable if:**

- i. A refund or credit is allowed the purchaser pursuant to warranty. (See Section 6a of this bulletin).
- ii. The full purchase price is refunded to the purchaser upon return of the merchandise. (See Section 6b of this bulletin).

**2. "SALE PRICE" IS MEASURED IN MONEY**

Pursuant to the definition of "sale price", tax applies not only to cash sales, but also to credit sales, and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration.

**a. Trade-ins.** When property is sold, with an allowance being made for traded-in property, tax applies to the entire sale price, including the allowance for trade-in. Thus, if a refrigerator is sold for \$800, the customer paying \$700 in cash and \$100 by way of allowance on a traded in refrigerator, tax is based on the full price of \$800.

However, §1765 of the law provides an exception to this rule. When one of the following items is traded against another of the same kind, the allowance for trade-in is deducted from the sale price in computing the tax: motor vehicles, watercraft, aircraft, chain saws, special mobile equipment, trailers and truck campers. More information on trade-in allowances is available in Instructional Bulletin #24, "Vehicle Dealers".

**b. Core Charges.** Customers who purchase property that can be reconditioned and resold by the seller are sometimes encouraged to bring their used property to the seller by the imposition of a "core charge" on the original purchase, which may then be refunded or credited to the customer when the used property is brought back to the seller. The core charge is considered part of the selling price of the new property being purchased and is subject to the sales tax. For instance, an alternator may be sold for \$80.00 with a core charge being stated in the amount of \$10.00. The total selling price subject to tax is \$90.00. If a used alternator is traded-in at the same time as the purchase of the new alternator, the selling price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort nor are core charges allowable as trade-in credits.

**3. CASH DISCOUNTS**

The definition of "sale price" states that "discounts allowed and taken on sales" are not included in the "sale price". Thus, if a 2% allowance is made for payment within a stated time,

**and this allowance or discount is actually taken by the customer**, tax applies to the stated price less the discount, or the amount actually paid.

For example: Two customers purchase \$100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount: tax is based upon a sale price of \$98. Customer B does not pay promptly and does not take the 2% discount: tax is based upon a sale price of \$100.

On the other hand, if interest is charged on overdue accounts, tax does **not** apply to the interest so charged.

**a. Coupons.** If a retailer issues a store coupon, the value of the coupon is a seller's discount which is deducted from the sale price before computing the sales tax. However, a coupon issued by a manufacturer is not a seller's discount. Tax in these situations is based on the full selling price.

**b. Rebates.** Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the seller and the purchaser. Sales tax is computed on the total sale price without any deduction for the manufacturer's rebate. The fact that the rebate is assigned by the purchaser to the seller does not change the taxability of the transaction.

For more information on coupons and rebates, refer to Instructional Bulletin #25.

#### **4. SERVICE CHARGES THAT ARE A PART OF THE SALE PRICE**

The definition of "sale price" includes "services which are a part of a retail sale". However, it excludes the "price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated".

In other words, the sales tax normally applies to the full amount charged for the transaction, **including any charges for services that are a part of the sale**, except for separately stated charges for installing, applying or repairing the property sold. For example, a caterer undertakes to prepare and serve food for a reception, the charge covering not only the cost of the food, but also the cost of preparation and service. Tax applies to the entire charge, since preparing and serving the food are services that are part of the sale. Even though charges for preparation and serving are separately stated, tax still applies to these charges, since they are not charges for "installing or applying or repairing the property sold".

**a. Alteration Charges.** When a merchant offers goods for sale, and undertakes to alter them to the customer's requirements, the charges for such alterations are part of the sale price on which tax is based, whether separately stated or not. For example, a customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The merchant or someone contracted by the merchant performs the alterations and charges the customer an additional \$10 alteration fee. The alteration charges will be considered a part of the sale price upon which tax is based, even though such charges are separately stated.

**b. Assembly Charges.** Some types of furniture and equipment are sold either on a knocked down, or unfinished, or on an assembled, or finished basis; the assembled or

finished item being priced correspondingly higher. Charges for assembling or finishing, in such cases, are part of the taxable sale price, whether separately stated or not.

In all the above cases, the alteration, assembly or finishing of the article sold constitute "services which are a part of [the] sale". Since they do not fall within the categories of "installing or applying or repairing the property sold", charges for these services are part of the "sale price" and are taxable whether separately stated or not.

## **5. OTHER CHARGES EXCLUDED FROM SALE PRICE**

The definition of "sale price" excludes the following charges:

**a. Charges for Installing or Applying or Repairing the Property Sold, if Separately Stated.** Such charges, if separately stated, are **not** part of the taxable "sale price". For example, completed drapes are sold by a merchant, who also undertakes to install them at the home of the customer. Tax applies to the full charge for the drapes (see 4, above) as well as to the charge for any hardware or other tangible personal property involved in the transaction; but the installation charges, if separately stated, are **not** part of the taxable "sale price".

Or, if a customer brings in a piece of furniture to be stained or painted, the merchant would charge tax on the price of the paint or stain, but would not charge tax on the charge for applying the paint or stain, if separately stated. Note that this differs from the situation where the customer picks out the piece of furniture from the dealer's stock, but wishes it painted or stained, in which case the total charge is taxable (see 4, above).

**i. Separate Statement of Charges.** In all the above cases, deduction of the service charges from the tax base depends on separate statements of such charges. While it is usually preferable that such charges be separately stated on the invoice to the customer, this is not essential. There must, however, be a separate statement of such charges on record somewhere, either on the statement to the customer, or in the records of the vendor.

**b. Transportation Charges.** Transportation charges are not included in the taxable "sale price" if:

- i. The transportation in question is from the retailer's place of business, or some other point from which shipment is made, directly to the customer; and
- ii. The transportation is by means of common carrier, contract carrier or the United States mails; and
- iii. The transportation charges are separately stated. (As noted above, such charges need not be separately stated on the invoice, provided a separate statement is otherwise available in the records of the vendor or vendee).

**All three** of the above conditions must be met if transportation charges are to be deductible. For example, charges for transportation from the point of manufacture to the vendor are not deductible; nor are charges for transportation from the vendor to the

vendee, if the vendor delivers in its own equipment rather than by common or contract carrier or mail.

Further information about transportation charges can be obtained from Instructional Bulletin #30.

**c. Service Charges in Lieu of Tips.** The definition of "sale price" does not include an amount charged or collected in lieu of a gratuity or tip, as a specifically stated service charge, when the amount so charged is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages. An amount or flat percentage charged or collected in lieu of a gratuity is not part of the selling price provided the gratuity is disbursed by the seller to the employee as wages.

**d. Maintenance and Service Contracts.** Charges for maintenance or service contracts are not part of the selling price provided the contract is optional to the customer and the charge is separately stated. Effective September 20, 2007, extended service contracts on automobiles became taxable. See Instructional Bulletins #24 and #53 for more information.

## **6. RETURN OF MERCHANDISE**

The definition of "sale price" excludes allowances made on defective merchandise that is returned pursuant to warranty. It also excludes returned property when a full refund is given.

**a. Returns Pursuant to Warranty.** When an adjustment of price is made by a retailer on the return of defective merchandise that has been warranted, the adjustment, or allowance, is deductible on a subsequent sales tax return of the retailer if the original sale was taxable and was so reported by the retailer.

For example: a tire is sold with a 30-month warranty, adjustment being based upon period of use. Assuming the tire was sold for \$30.00 with an allowance of \$1.00 per month for the period by which the tire fails to meet the warranty. If the tire is returned for failure after 24 months, the allowance would be \$6.00. The purchaser would be entitled to \$6.00 plus sales tax on this amount; and the retailer would deduct \$6.00 on his next sales tax return. Usually such adjustments are made as the result of a written warranty, as in the case of an automobile tire. The warranty need not be in writing, since there is a general unwritten warranty that goods are not defective for the purpose for which they are intended.

While an adjustment of sales tax liability may be made for allowance by warranty, whether written or not, an adjustment cannot be made where the merchandise is returned as unsatisfactory, not because of written warranty or because it is defective and so fails to meet an unwritten warranty; but because the purchaser finds it is not suited to his purpose. In the latter case, unless the **full** purchase price is refunded (see below, under b), no adjustment of sales tax can be made.

For example: A customer purchases a snow blower and after using it for a short time finds it is not powerful enough to meet the customer's particular needs. There is neither failure to meet a written warranty nor any defect in the machine. The customer returns it

to the dealer and is allowed 85% of the original purchase price. There is no adjustment permitted so far as sales tax is concerned.

**b. Return of Merchandise and Refund of Full Purchase Price.** Where merchandise is returned by the customer and the **full** purchase price is refunded, either in cash or by credit toward other purchases, the retailer may deduct the original purchase price of the item on a subsequent sales tax return, if the original transaction was taxable and was so reported. In such a case, applicable sales tax would also be refunded to the customer.

If, in connection with such returned merchandise, the retailer makes a standard service charge, the transaction will nevertheless be considered as a refund of the full purchase price if the service charge is separately shown and so identified on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction.

For example: A retailer makes a standard service charge of \$1.00 in all cases where merchandise is returned by the customer for refund. The invoice or credit memo to the customer indicates "purchase price refunded \$30.00, less service charge \$1.00 - net \$29.00". The retailer should treat this as a refund of the full purchase price and also refund the \$1.50 sales tax originally paid on the \$30.00 sale.

However, except for deduction of a standard service charge, the refund must be of the entire purchase price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (the transaction not involving an express or implied warranty), no adjustment of sales tax can be made.

## **7. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
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**ATTACHMENT #1**  
**Excerpts taken from Maine Revised Statutes, Title 36**

**36 §1752. Definitions**

**11. Retail sale.** "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

A. "Retail sale" includes:

- (1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later;
- (2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State;
- (3) A sale in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character; and
- (4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:
  - (a) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary course of business; or
  - (b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.

For purposes of this subparagraph, "affiliate" or "affiliated" includes both direct and indirect affiliates.

B. "Retail sale" does not include:

- (1) Any casual sale;
- (2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;

- (3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;
- (4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;
- (5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;
- (6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services;
- (7) The sale, to a person engaged in the business of renting furniture, or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105; or
- (8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953. For purposes of this subparagraph, "loaner vehicle" means an automobile to be provided to the dealer's service customers for short-term use free of charge pursuant to the dealer's franchise, as defined in Title 10, section 1171, subsection 6.

**13. Sale.** "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

**14. Sale price.** "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:



- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;
- (3) The price of property returned by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;
- (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;
- (6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;
- (7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;
- (8) The fee imposed by Title 10, section 1169, subsection 11;
- (9) The fee imposed by section 4832, subsection 1;
- (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B; or
- (11) Any amount charged or collected by a person engaged in the rental of living quarters as a forfeited room deposit or cancellation fee if the prospective occupant of the living quarters cancels the reservation on or before the scheduled date of arrival.

**17. Tangible personal property.** "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.

**17-B. Taxable service.** "Taxable service" means the rental of living quarters in a hotel, rooming house, tourist or trailer camp; the transmission and distribution of electricity; the rental

or lease of an automobile; the sale of an extended service contract on an automobile that entitles the purchaser to specific benefits in the service of the automobile for a specific duration; and the sale of prepaid calling service.

#### **§1765. Trade-in credit**

When one or more of the following items of tangible personal property are traded in toward the sale price of another of the same kind of the following items, the tax imposed by this Part shall be levied only upon the difference between the sale price of the purchased property and the trade-in allowance of the property taken in trade, except for transactions between dealers involving exchange of the property from inventory:

- 1. Motor vehicles.** Motor vehicles;
- 3. Watercraft.** Watercraft;
- 4. Aircraft.** Aircraft;
- 6. Chain saws.** Chain saws;
- 7. Special mobile equipment.** Special mobile equipment;
- 8. Trailers.** Trailers; or
- 9. Truck campers.** Truck campers.

#### **§1811. Sales tax**

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile, including a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided. As used in this section "loaner vehicle" has the same meaning as in section 1752, subsection 11, paragraph B, subparagraph (8).

The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

#### **§1861. Imposition**

A tax is imposed, at the respective rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which

would be subject to tax under section 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until the person has paid the tax or has taken a receipt from the seller, as duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller is liable for it. Retailers registered under section 1754-B or 1756 shall collect the tax and make remittance to the assessor. The amount of the tax payable by the purchaser is that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal.